THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.s 5171, 5504 and 8415 of 2005

Dated: 24th September, 2007

Between :-

W.P.No.5171 of 2005

N. Narayana Raju and another ..
Petitioners

And

Government of Andhra Pradesh,
Represented by its Principal Secretary,
Irrigation & CAD (PW.LA.I) Department,
Secretariat, Hyderabad and 3 others ..
Respondents

W.P.No.5504 of 2005

M. Suryanarayana and another ..
Petitioners

And

Government of Andhra Pradesh,
Represented by its Principal Secretary,
Irrigation & CAD (PW.LA.I) Department,
Secretariat, Hyderabad and 5 others ..
Respondents

W.P.No.8415 of 2005

V. Ravi ..
Petitioner

And

Government of Andhra Pradesh,
Represented by its Principal Secretary,
Irrigation & CAD (PW.LA.I) Department,
Secretariat, Hyderabad and 3 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.s 5171, 5504 and 8415 of 2005

COMMON ORDER:-

Heard Sri M.Rama Rao and Sri K.Satyanaraya Murthy, the learned Counsel representing writ petitioners in all these Writ Petitions and the learned A.G.P. for Irrigation representing the respondents in the Writ Petitions.

2. In this batch of Writ Petitions, vacate applications are filed to vacate the interim orders.

3. In the light of the short question involved in all these Writ Petitions, with the consent of the Counsel on record, these Writ Petitions are being disposed of finally.

4. The Counsel representing the writ petitioners in all these Writ Petitions would submit that absolutely no reasons had been recorded for cancellation and further at least the petitioners were not put on notice before cancellation and the same is in violation of principles of natural justice. The learned Counsel also pointed out that this was done due to the pressure of the local M.L.A and absolutely, there is no reason or rationale behind this cancellation. The Counsel

also had taken this Court through the contents of the affidavits filed in support of these Writ Petitions.

5. The learned A.G.P. for Irrigation had taken this Court through the contents of the counter affidavits filed in support of the respective vacate applications. The learned Counsel would point out that this is not a case where the issuance of prior notice before cancellation would be necessary. The learned Counsel also would comment that clause (6) of the G.O. specifically specifies that *the permission now accorded is liable for cancellation the any time without any notice and without assigning any reasons thereof, if it is required on emergent basis or otherwise.* Hence, the learned Counsel would contend that the petitioners have no legally enforceable right to maintain these Writ Petitions and hence, these Writ Petitions are liable to be dismissed.

6. Heard the Counsel on record.

7. In all these Writ Petitions, the writ petitioners filed these Writ Petitions praying for a Writ of Mandamus declaring the orders passed by the 1st respondent i.e., Government in G.O.Rt.No.165, Irrigation & CAD (PW.LA.I) Department, dt.26-2-200, wherein the Government cancelled the lease 26-2-2005, wherein the Government cancelled the lease granted in favour of the petitioners in G.O.Rt.No.1792, Irrigation & CAD (PW.LA.I) Department, dt.22-12-2004 in respect of lands in Regullanka village, Atreyapuram Mandal, East Godavari District for development of Bio-diesel Plantation and other Plantations without giving any prior notice as illegal, arbitrary, without jurisdiction and in violation of principles of natural justice and

quash the same and pass such other suitable orders.

8. The facts narrated in all these affidavits filed in support of the respective Writ Petitions in brief are that these petitioners are landless poor persons and they are intending to raise bio-diesel plantation in Government vacate land and there are vast extents of vacate Government lands in Regullanka village, Atrayapuram Mandal, covered by bushes and not useful for the Department and hence these petitioners made applications to the Irrigation Department for allotment of vacate lands in their favour on long lease and on their representations, which were forwarded to the concerned authorities by the Government for offering their remarks, and it appears that the Superintending Engineer, Irrigation Circle, Dowlaiswaram and the Engineering-in-Chief (Irrigation), Hyderabad had sent their reports to the Government stating that the lands applied for lease by the petitioners are vacate since long time and they are covered by bushes and not useful for the Department and if leased, the Government may get some revenue. The Government after careful examination of the matter, basing on the reports submitted by the Engineering-in-Chief, dt.10-8-2004 and 17-11-2004, accorded permission to lease out the vacate irrigation lands to an extent of Ac.20 each application on lease basis for a period of 30 years in Sy.No.4 and 5 of Regullanka village, Atreyapuram Mandal, East Godavari District as per the sketch enclosed to the G.O., for the development of Bio-diesel plantation and also permit the petitioners to have other plantations also in addition to bio-diesel plantation to sustain their livelihood, subject to certain conditions. It is also stated that in pursuant to the orders

issued by the Government in G.O.Rt.No.1792, dt.22-12-2004, the respondents 3 and 4 directed the petitioners to enter into agreements by paying necessary lease amount and also deposit amount for allotment of vacate land and accordingly the petitioners entered into the respective agreements and had taken physical possession of the lands also. It is stated that due to local politics, it appears that the local M.L.A. pressurized the Government to cancel the leases granted in their favour for obvious reasons. It appears that the 1st respondent yielding to the pressures exerted by the local M.L.A. without calling for any reports whatsoever from the concerned authorities and without issuing any notice to the petitioners, issued G.O.Rt.No.165, Irrigation & CAD (PW.LA.I) Department dt.26-2-2005 cancelling the orders passed by the Government in G.O.Rt.No.1792, dt.22-12-2004 wherein the Government has accorded permission to lease out the vacant irrigation lands in their favour for development of bio-diesel plantation in Sy.Nos.4 and 5 of Regullanka Village, Atreyapuram Mandal, East Godavari District for period of 30 years, by virtue of which the respective petitioners are in possession of the respective extents.

9. In the vacate applications sworn to by the Executive Engineer, it is stated that the Government of A.P. in G.O.Rt.No.1792 dt.22-12-2004 have issued instructions to lese out the Government vacant land available in R.S.No.4 & 5 of Regullanka of Bobbarlanka village of Athreyapuram Mandal to 5 unemployed youth to stand on their own feet for livelihood, who are landless

persons the 20 acres to each for development of bio-diesel plantations and other plantations and an extent of 100 acres of land is leased out to the said petitioners at 20 acres each on lease basis for a period of 30 years on temporary lease basis and accordingly, the land was leased out to the petitioners and the terms and conditions imposed in para from (a) to (g) are unaltered. It is also stated that the averments of the petitioners that due to political pressure extracted against the respondent No.1 is not known to this Department and it is not true to say that due to the political pressure extracted by the local M.L.A only, the G.O.Rt. No.165, dt. 26-2-2005 was issued for cancellation of the lease accorded to the petitioners. It is also stated that whatever instructions issued by the Government in the shape of G.O., the same should be implemented scrupulously by the Department and also that according to condition of 6 of G.O.Rt.No.1792, dt.22-12-2004 of the terms and conditions i.e., "The permission now accorded is liable for cancellation at any time without any notice and without assigning any reasons therefore if it is required on emergent basis or otherwise, the lease can be cancelled by the Government also read with clause 21 of the Agreement and as per the clause in the lease agreement the action is being taken for cancellation of lease.

10. G.O.Rt.No.1792, dt.22-12-2004 is placed before this Court and the said G.O. reads as hereunder:-

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Major Irrigation – E.G.District – Allotment of vacant irrigation Land on lease basis in Regullanka (v), Atreyapura (M), E.G.District to S/Sri V.Ravi, V.Satya Prasad,

M.Suryanarayana, N.Narayana Raju and B.Prasad Raju of Rajahmundry (v) for development of Bio-plantation and other plantations – Orders – Issued.

- - - - - - - - - - -- - - - - - - - - -- - - - - - - - - -- - - - - - - - - -- - - - - - - - -- -

IRRIGATION AND CAD (IRR.I.2) DEPARTMENT

G.O.Rt.No.1792 Dated:22-12-2004

Read the following:

1. Representation from Sri V.Ravi, Rajahmundry, addressed to Hon'ble Minister for Major Irrigation dated nil.
2. Representation from Sri V.Satya Prasad, Rajahmundry, addressed to Hon'ble Minister for Major Irrigation, dated nil.
3. Representation from Sri M.Suryanarayana, Rajahmundry, addressed to Hon'ble Minister for Major Irrigation, dated nil.
4. Representation from Sri N.Narayana Raju, Rajahmundry, addressed to Hon'ble Minister for Major Irrigation, dated nil.
5. Representation fro Sri B.Prasada Raju Rajahmundry, addressed to Hon'ble Minister for Major Irrigation, dated nil.
6. From the Engineer-in-Chief (Irrigation), Hyderabad, Lr.No.DCE.IV/OT -GDS/AE3/141 Vol.4/2004, dt.8-10-2004.
7. From the Engineer-in-Chief (Irrigation), Hyderabad, Lr.No.DCE.IV/OT (GDS)/AE3/141 Vol.4, dt.17-11-2004.

* * *

ORDER:-

In the reference 1st to 5th read above, some youth have shown their enthusiasm to stand on their own feet for livelihood by raising Bio-Diesel Plantation in the vacant lands of Government, which are not useful to Department applied for long lease. The applications of the individuals were forwarded to the concerned for offering their remarks.

2. The Superintending Engineer, Irrigation Circle, Dowlaiswaram and Engineer-in-Chief (Irrigation), Hyderabad have stated that the lands applied for lease by these young people, are vacant since a long time and they

are covered by bushes and not useful for the Department and if leased out, Government may get some revenue.

3. In the circumstances reported by the Engineer-in-Chief (Irrigation), in the references 6th & 7th read above, Government after careful examination of the matter hereby accord permission to lease out the vacant Irrigation land to an extent of 20 acres (twenty acres only) each to the following five applicants on lease basis for a period of 30 years in S.Nos.4 & 5 of Regullanka (v), Atreyapuram (M), East Godavari District as per sketch enclosed:-

1. Sri V. Ravi, Rajahmundry .. 20 acres
   S/o.Sri V.C.Varadaiah (allotted as per sketch
   D.No.80-17-33, marked (A) excluding
   Koka Bhaskaramma Nagar burial ground)
   Rajahmundry, E.G.District
2. Sri V.Satya Prasad .. 20 acres
   S/o. late V.Srihari Rao (Allotted as per sketch
   D.No.6-14-10, T.Nagar marked (B).
   Sivalayam Street,
   Rajahmundry, E.G.District
3. Sri M.Suryanarayana .. 20 acres
   S/o. (late) M.Venkataswamy (allotted as per sketch
   D.No.79-22-10, Mallina Nagar marked (c)
   J.N.Road,
   Rajahmundry, E.G.District
4. Sri N.Narayana Raju .. 20 acres
   S/o. (Late) Suryanarayana Raju (allotted as per sketch
   D.No.28-28-5, Main Road marked (D)
   Jampet
   Rajahmundry, E.G.District
5. Sri B.Prasada Raju .. 20 acres
   S/o. Sri B.Krishnam Raju (Allotted as per sketch
   Flat No.201, Netaji Towers from out of the
   A.V.Appa Rao Road balance area)
   Rajahmundry, E.G.District

For development of bio-diesel plantation and also permit them to have other plantations also in addition to Bio-diesel plantation (as per sketch enclosed) to sustain their livelihood subject to the following conditions:-

1. The land may be allotted on temporary lease basis for a period of 30 years only and should be renewed every 5 years as per BSO-15A or as per the Government orders issued from time to time.
2. The land in question is liable for submersion during high floods and the lease holder has to take care for the damages caused due to floods. The Department is no way responsible for protecting the bio-diesel plants/other plantations from the floods etc.
3. No construction will be allowed on the land either on temporary/permanent basis
4. The applicants should not create any obstruction for free flow of water and no damages should be caused to the Government property or structure. If any damages occurred, the same should be restored immediately at the cost of the lease holder.
5. The applicants should not make any alteration and the land should not be sub-leased to any other firm/individuals at any cost.
6. The permission now accorded is liable for cancellation at any time without any notice and without assigning any reasons therefore, if it is required on emergent basis or otherwise.
7. The applicants should pay the lease amount for 20 acres as per the rate fixed in G.O.Ms.No.181 Irrgn. Dated 24-5-1985 or at the enhanced rate issued by the Government from time to time.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.C.V.S.K.Sarma
Principal Secretary to Government.

11. On a careful consideration of the respective stands taken by the parties, this Court is of the considered opinion that in the facts and circumstances of the case without putting the respective petitioners on notice relating to the

cancellation, passing the impugned order, cannot be sustained. No doubt, the other averments made relating to the pressure of the M.L.A., had been specifically denied. Hence, this Court is not inclined to express any opinion relating to those aspects, suffice to state that since before making the order of cancellation, the respective petitioners were not put on notice and were not given an opportunity of explaining their stands relating to the said cancellation, the respondents to put the petitioners on notice, giving opportunity to the petitioners to explain their stand and pass appropriate orders in accordance with law, in the light of the explanation if any, which would be submitted by the respective petitioners in this regard if the respondents are inclined to further proceed with the proposed action. Accordingly, the Writ Petitions are disposed of. No order as to costs.

_____

Justice P.S.Narayana

24th September, 2007

smr